VML Legislative BULLETIN
VIRGINIA MUNICIPAL LEAGUE
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March 22, 2006

2006 regular session wrap up

If only . . .

The 2006 regular session of the General Assembly would be judged a productive one by any standards--if only a budget had been adopted.

Absent that major accomplishment, the regular session saw groundbreaking legislation adopted to restructure telecommunications taxes.

HB 568 (Nixon) is the product of several years of negotiation among the services providers and local governments. The approach to telecommunications restructuring puts Virginia ahead of other states in dealing with this issue.

VML was a leader in the effort to arrive at the consensus on telecommunications tax restructuring. The premise was to protect the long-term financial interests of Virginia's local governments and to ensuring a modern communications service tax policy that treats corporate competitors equitably.

Legislation also was adopted that rewrites the rules in cable television franchising. Local governments will see significant reductions in their franchising process, and constitutional questions remain on whether HB 1404 (Griffith) and SB 706 (Stolle) violate the state constitution's prohibition on the impairment of the obligation of contracts.

The General Assembly postponed for a year serious consideration of any constitutional revisions to allow homestead exemptions or to require property tax caps.

The General Assembly reconvenes on April 19 to consider gubernatorial amendments and vetoes to the legislation enacted during the regular session.

Absent the budget--and the dust settling on transportation funding--an overview follows of the major legislative initiatives affecting local governments during the 2006 regular session.

Telecommunications tax reform update

A major restructuring of telecommunications taxes is achieved in HB 568 (Nixon). By adoption of this bill, Virginia has stepped into the forefront of states struggling to deal with issues raised by changes in the communications industry.

The bill replaces current local consumer utility taxes, business license taxes in excess of 0.5 percent of gross receipts, cable franchise fees and local E-911 fees with a statewide 75 cents per month E-911 fee and 5 percent Communications Sales and Use Tax on all voice, video and audio communications regardless of technology. Cable companies also will collect and pay the public rights-of-way use fee that now applies to local exchange telephone companies.

The new taxes and fees will be collected by the companies from their customers and paid monthly to the Virginia Department of Taxation. These revenues will be held in a segregated trust fund and distributed monthly to all counties, cities and towns, without going through the state appropriation process. This will insulate the funds from future "raids" by General Assembly budget writers. Each county, city and town's distribution percentage will be the same as its percentage of the FY 2006 state total of the taxes and fees being eliminated. After June 30, 2006, the Auditor of Public Accounts will compile the figures on which the distribution will be based, from the FY 2006 annual reports submitted to his office by localities' auditors.

Small towns that do not routinely furnish an annual audit report to the APA will have to make a one-time report of their revenues from these taxes and fees, so that they can participate in future distributions of the new tax.

Local officials may hear some public safety agencies complain that the bill is not "revenue neutral" for them, because the landline E-911 funds that now come to the locality earmarked for that purpose will be replaced by a general fund distribution. But because those current E-911 collections will be reflected in the locality's distribution percentage, this will not be a revenue loss, only a change in how the revenue is labeled.

VML is convinced the bill's broadened tax base and fixed-percentage distribution method will reasonably ensure that no locality will lose any current revenue as a result of the change.

The league supports the bill because it will replace a shrinking tax base with one that should offer reasonable future growth.

The revenue base for the current taxes and fees is rapidly shrinking as customers increasingly shift to technologies that are now taxed at lower rates (wireless phone service) or are not taxed at all (Voice over Internet phone service; satellite TV).

Figures reported by VDOT recently indicate that land-based phone lines in service in Virginia (the base for the current consumer utility tax) decreased another 4.25 per cent in the 12 months ended September 30, following a 5.4 percent decline in the previous year. Increased growth in VOIP usage will only accelerate this decline. In contrast, when all types of communications services are included, the industry is growing in Virginia. Applying the replacement 5 per cent tax to all these services is intended to ensure that localities will have reasonable annual revenue growth from this source for the foreseeable future.

Cable television franchising

HB 1404 (Griffith) and SB 706 (Stolle) rewrite the statutes for cable television franchising when the telephone company competes with the cable company for offering cable. The bills retain local franchising, but with significant reductions in local authority in the franchising process. Here are some of the major provisions covered in the bills:

- The bills generally apply only when a business, usually a telephone company, comes to a locality to provide cable TV in competition with the existing cable operator. Prior to the time that a competitor comes to town, however, the only time the existing operator may use the provisions of the bill is when its franchise agreement is coming to an end or has ended.
- The existing company must continue to pay its franchise fees, as does the new company. In addition, the new company must pay additional fees so that its share of the total cost of public, educational and government access (PEG) programming and the cost of institutional networks (INET) are covered.
- The locality enters negotiations for a franchise agreement with a new applicant to provide cable. The agreement may not be more "onerous" than the rules for the existing operators and may not unreasonably prejudice either the new entrant or existing operator.
- To start the process, the new company files a request to negotiate a franchise. Then, it enters a short 45-day period of negotiations. The negotiations may go longer, but at the 46th day, the applicant may file notice that it will begin service in 30 days. Once that happens, the locality adopts a unilateral ordinance setting the rules – an ordinance cable

franchise (OCF). The ordinance terms are largely regulated by the new legislation. The process is set up so that the new company begins offering cable service without having received any authority to do so. The ordinance is retroactive to the date service began. The local government must adopt it within 120 days of the filing of the notice by the applicant.

Here are details on the terms of the ordinance cable franchise (OCF).

- The ordinance may require the new operator to offer the same number of PEG channels as the lowest number offered by an existing franchisee. If the locality currently has fewer than three, it may require both companies to offer three. If the PEG channels have a sufficient amount of non-repeat programming, so that additional PEG channels are needed, the locality may require both companies to increase the number of channels, but caps of three in the basic tier and seven in the aggregate are in the bill. The bill has rules for what constitutes substantial utilization of the PEG channels.
- The OCF is granted with a 15-year term.
- The ordinance may require the new company to interconnect with the existing so the new company can carry the PEG channels being played by the incumbent.
- The new company has to pay a franchise fee that's no higher than the incumbent's fee.
- The new company may be required to pay a PEG Capital Fee to support the capital costs of the PEG channel facilities and INET. The fee must be on a per-subscriber basis and is equal to any similar recurring fee the incumbent pays. In addition, if the incumbent provides the studios and other facilities for PEG & INET, the new entrant may be charged a maximum 1.5 percent fee that equals the value of the in-kind services. At the end of the incumbent's franchise, the locality is to negotiate with both companies for a fee. If negotiations fail, the locality may charge both an amount no greater than the prior PEG Capital Fee.
- At the end of the incumbent's franchise, it no longer may be required to operate the PEG and INET facilities. VML is concerned that after the incumbent's franchise ends, the combined PEG Capital Fee will be insufficient to pay for operation of the PEG and INET facilities.
- The ordinance may enforce customer service standards. However, since the new entrant will likely be a telephone company, the telephone company may not be required to have different customer service standards for its cable operations. The company may follow one set of rules – the existing telephone customer service standards. For street cut and other rights-of-way management issues, the new entrant complies with existing regulations it faces as a phone company.
- The ordinance may require the new company to provide INET services to government buildings, so long as the requirements are the same for all cable providers.
- The ordinance may provide that the new entrant will provide cable to all occupied residential units in the area the company chooses as its "initial service area" within three years. Thereafter, the company must provide cable to a maximum of 65 percent of the residential units in seven years. In the eighth year of the franchise, the locality may adopt an ordinance requiring service to 80 percent of the residences by the 10th year of the franchise. In no case, however, may the new company be required to offer cable in any area where it doesn't provide telephone service.

Existing franchises

The existing operator may require the locality to make the franchise terms for its competitor available to it by an "amendment and restatement in lieu of its existing franchise" per § 15.2-2108.26. The existing operator, however, may not reduce the geographic area to which it provides cable service.

VML is concerned that this provision, that basically allows the existing cable operator out of its negotiated franchise, violates the Virginia constitution's prohibition on the impairment of the obligation of contracts. Effectively, the General Assembly has allowed cable operators to unilaterally abandon their agreements they reached with local governments across the state. This problem could only be cured if the legislation "grandfathered" all existing franchises, which the industry refused to do.

Town/county issues

If a town has a franchise now or adopts an ordinance for a franchise later, the county franchise will not apply in the town limits.

Taxation and finance

Manufacturing bills change form throughout session

SB 260 (Wagner) and HB 1290 (Saxman) left the General Assembly in identical forms: each with relatively new provisions defining "idle" equipment. The bills make certain changes to the machinery and tools tax, and create a study group to consider further changes over the next year, in preparation for the 2007 legislature.

The problematic part of the bill is the new definition of "idle" equipment. The bill defines "idle" equipment as that being out of service the prior three months, with the reasonable presumption that it will continue to be out of service for the next year. By another provision of the legislation, equipment fitting this description is exempt from machinery and tools tax.

The bills provide that the commissioner (or other assessor) must consider any bona fide, independent appraisal presented by the taxpayer. The appraisal doesn't have to be used, but must be considered.

Under the provisions of the legislation, a new exemption for certain equipment will be in effect. The exemption covers certified pollution control equipment and facilities used in collecting, processing, and distributing landfill gas or synthetic or natural gas recovered from waste. This would also include the equipment used to grind, chip, or mulch tress, tree stumps, underbrush, and other vegetative cover for re-use as landfill or the other gases. This affects such equipment put in place on or after July 1, 2006.

The working group established in the legislation directs the Tax Commissioner to convene a working group including representatives of the Virginia Manufacturers Association, the Virginia Poultry Federation, the Printing Industries of Virginia, the Virginia Chamber of Commerce, the Virginia Association of Counties, the Virginia Municipal League, and the Commissioners of the Revenue Association of Virginia, to consider and report on the feasibility of, and fiscal impacts upon local governments associated with:

(i) transitioning to a uniform method of assessment of machinery and tools, and potential assessment methods suitable for uniform statewide application;

(ii) adopting uniform criteria for determining "technological obsolescence;"

(iii) exemption from local taxation of new investments in certified pollution control equipment and facilities;

(iv) implementing a uniform method for classification of "idle" or stored equipment as capital, and the potential classification criteria suitable for uniform statewide application;

In addition, the group will examine:

(v) proposed guidelines establishing minimum standards for appraisals of "idle" equipment.

Sales tax holiday on school supplies
SB 532 (Parrish) provides a sales and use tax exemption, beginning in 2006, for certain school supplies, clothing and footwear purchased during a three-day period each year beginning on the first Friday in August. The exempt items are: each school supply item with a selling price of $20 or less and each article of clothing or footwear with a selling price of $100 or less. The bill also allows dealers to not charge the sales tax <u>to the purchaser</u> on other items sold during the same time period, although the dealer would still owe the sales tax to the state. SB 532 is the omnibus bill that incorporated several versions of sales tax holidays from several other patrons.

New caps on real estate tax exemptions for the elderly and the disabled
Financial limits for real estate tax exemptions for the elderly and disabled were changed in the omnibus HB 121 (Marshall, R.G.). The changes were: (i) for localities in Northern Virginia, increasing to $540,000 (from $340,000) the maximum financial worth cap a locality may impose and adding Clarke, Fauquier, and Stafford counties to the applicable localities; and (ii) for certain other localities in central Virginia and Tidewater, increasing such cap to $350,000 (from $200,000), and adding the cities of Norfolk and Richmond to the localities for which this higher cap is applicable.

Ain't no penalty higher than…
No penalty for failing to pay a local tax or assessment can be more than the amount of the tax, effective July 1, 2006, according to HB 1283 (Johnson).

Potential new tax exemptions in redeveloping and other local areas
SB 358 (Edwards) authorizes local governing bodies to provide for partial tax exemption of new structures and other improvements to real estate located in redevelopment or conservation areas or rehabilitation districts. The partial exemption would not exceed 50 percent of the cost of such structure or improvement, subject to certain locally-determined criteria. The bill is contingent on a constitutional amendment authorizing the exemption, which means that the earliest the legislation could be in effect is 2008.

HB 518 (Armstrong) allows localities to establish local tourism zones with the potential for tax incentives and regulatory flexibility. Provisions could be used for up to 10 years and may include reduced permit fees, user fees, and BPOL taxes, and flexibility in special zoning, permit processes, and other local ordinances.

Lodging tax is only for lodging
SB 86 (Watkins) makes it clear that the transient occupancy tax (aka "lodging tax") is ONLY used on rooms intended for lodging. A similar measure passed last year for counties, says that conference and meeting space is not subject to the lodging tax.

Meals tax is not gratuitous
Senator Watkins also wanted a bill to make clear that the meals tax does NOT apply to gratuities (tips) or other service charges. The bill was specifically targeted at banquets and large group meals for which a service charge is added as part of the cost of the event. With the passage of SB 85, tips and service charges are not taxable.

Changes in personal property taxes
HB 436 (Griffith) allows local car assessments to be based on sources other than just NADA books. Other valid vehicle valuation services may be used.

HB 327 (Morgan) creates separate classes of personal property for rate purposes of boats and watercraft based on the weight of the watercraft and whether it is used for business purposes. The three new classes are:

- Boats weighing 5 Tons or more **not** solely used for business purposes
- Boats weighing less than 5 Tons **not** solely used for business purposes
- Boats weighing 5 Tons or solely used for business purposes

Courts Technology Fund

HB 68 (Callahan) and SB 157 (Norment) create a special a non-reverting Courts Technology Fund to be administered by the Supreme Court of Virginia and to be funded by increases in filing fees. Funds are to be allocated at the direction of the Supreme Court of Virginia to staff, advance, update, maintain, replace, repair and support the telecommunications and technology systems of the judicial system. Revenues raised in support of the Fund shall not be used to supplant current funding to the judicial branch.

Failed tax/finance legislation

Legislation that failed to pass in the regular session includes:

- HB 169 (Lingamfelter), which would have required localities to set the real estate tax rate so that the total real estate tax revenue will not increase by more than three percent more than collections in the prior year. The bill would have provided an exception that localities can increase the rate up to the rate of population growth plus the rate of inflation (but still by no more than six percent more than the prior year.
- SB 138 (O'Brien by request) would have changed the method of real estate assessment to the percentage increase or decrease in the *average* sales price of real property in the assessment area.
- Several pieces of legislation that would have provided a sales tax holiday for energy-efficient products, including certain washers, dryers, dishwashers, ceiling fans, dehumidifiers, programmable thermostats, refrigerators, incandescent or fluorescent light bulbs, etc. Since the sales tax holiday for school equipment passed for the first time this year, a sales tax holiday for other items becomes more likely over time.
- HB 319 (Albo), which would have required that automobiles by valued at the NADA or Kelly blue book values, whichever is lower. VML and other local government representatives explained the administrative and logistical problems with this method and the patron withdrew the bill.
- Of interest to Metro riders were SB 267 (Whipple) and similar bills HB 1003 (Ebbin) and HB 1082 (Scott, J.M.) that would have imposed an additional ¼-cent sales tax in Arlington and Fairfax counties, and the cities of Alexandria, Fairfax, and Falls Church if approved by local ordinance in enough of these localities to comprise at least 90% of the population in that specified area. The revenue was intended solely for each locality's financial obligations to the Washington Metropolitan Area Transit Authority (Metro). The bills died in House Finance committee.
- A number of constitutional amendments that would have capped real estate tax assessments or allowed homestead exemptions were carried over because they were "first year" amendments. The policy in the General Assembly has been to enact "first reference" constitutional amendments only in odd years, because constitutional amendments have to be endorsed by two sessions separated by a general election.
- Constitutional amendments to create a Transportation Trust Fund were carried over.

- Legislation to require that legislation creating or increasing state or local taxes contain a sunset clause passed the House but died in the Senate Rules Committee.

Land use

Coordinating land use and transportation
The House Republican leadership successfully maneuvered a set of land use / transportation coordination bills that are generally favorable to local land use authority.

- HB 1506 (Athey) expands the group of cities, towns and counties that may enact conditional zoning rules, including cash proffers. Currently localities with growth rates of 10 percent can use conditional zoning; HB 1506 reduces that qualifying growth rate to 5 percent. The bill removes the requirement that the cash proffers be used on the roads directly related to the project for which the proffers were accepted, and allows the local match for transportation revenue sharing projects to come from cash proffers.
- HB 1513 (Frederick) has the goal of improving coordination between the Virginia Department of Transportation and local governments on land use and transportation. The bill requires major comprehensive plan amendments, rezonings and subdivision plats to be reviewed by VDoT. The legislation as originally introduced was much broader reaching in terms of state oversight of local land use decisions, but VML and other local government parties were able to negotiate language that addresses many of the concerns relating to local government authority.
- HB 1521 (Marshall, R.G.) requires the comprehensive plan to include a map showing all road and transportation improvements, including cost estimates of the roads and transportation facilities, to the extent that information is available from the Virginia Department of Transportation. The bill also requires evaluating road and transportation facilities, including cost estimates, in developing the comprehensive plan.
- HB 1528 (Hamilton) links the capital improvement plan and the comprehensive plan. The bill requires the capital improvement program to include estimates of the cost of each road and transportation improvement adopted as an amendment to a locality's comprehensive plan.

Transfer of development rights
SB 373 (Watkins) authorizes localities to adopt a transfer of development rights ordinance. The governing body will designate sending areas where the development rights may be taken and receiving areas where the development rights may be sent. As a result, the locality can lower the density in the sending areas and allow increases in density where growth makes the most sense for the locality. The reduction in density on the sending parcel is permanent. The increase in density for the receiving parcel is permanent also. Any later rezoning of the receiving parcel may not take away the increases that were transferred.

Clustering
SB 374 (Watkins) requires clustering provisions to be put in any local zoning ordinance if the locality has a growth rate of 10% between 2 censuses and has less than 2,000 people per square miles. The ordinance must apply to at least 40% of the unimproved land in residential and agricultural zones.

Billboards
HB 665 (Wardrup) and SB 87 (Watkins) will allow vegetation to be trimmed in front of a billboard in order to make it more visible. The bill includes a timetable for an appeals process to the proposed beautification plan if plants need to be relocated and charges the appealing party a

$400 fee. Carried over were HB 1254 (Hugo) and SB 4 (Williams), which would have allowed billboards to be relocated up to a mile from its original location, in addition to changing the height and angle of the sign to make it more visible.

Siting of energy facilities
SB 262 (Wagner) creates a statewide energy policy. The main impact of the bill on local government is the siting of nuclear power plants, wind farms, solar energy farms, liquefied natural gas marine terminals and LNG storage facilitates. The State Corporation Commission decides where these facilities may be placed, but the specific facility would still be subject to the local zoning process. Localities did not retain that zoning authority under the legislation as originally introduced.

Nonconforming buildings
HB 78 (Suit) deals with the repair and rebuilding of damaged buildings. The bill requires that no matter the extent of damage or destruction, a damaged building may be rebuilt as it was if the rebuilding cannot conform to the zoning ordinance. If the rebuilding can conform to the current zoning ordinance, however, it would have to meet those criteria. The rebuilding has to take place within two years, unless the damage comes from a disaster serious enough to be designated a federal disaster, in which case an additional two years may be taken for repairs. Currently is a building is damaged more than 50 percent, many localities require that the buildings be rebuilt in conformance with the zoning ordinance. HB 78 does away with this authority.

Sidewalks
HB 686 (Brink) clarifies that when a lot is being developed, either in a subdivision or on a street, and the surrounding lots have sidewalks, the developer may be required to build the sidewalk in front of his property. This is the existing practice in many towns and cities, so the bill ends up restating existing law.

Failed land use bills
The Governor's bill to allow localities to deny rezonings if the off-site road improvements are inadequate failed in a house committee. The General Assembly also killed legislation that would have authorized the Department of Environmental Quality to enter into environmental covenants with interest holders in real property that restrict the use of the property. Ten states enacted similar Uniform Environmental Covenant Act bills in 2005, including neighboring states of Delaware, Maryland, West Virginia and Kentucky. Legislation that would have restricted the use and operation of publicly owned athletic fields, including requirements to obtain the consent of adjacent homeowners for use of the fields during certain hours, was killed in the House Courts of Justice Committee. This bill (HB 1368 - Hull) received a great deal of attention in the press and would have had a significant impact on recreational and athletic programs.

General government

Eminent domain / condemnations
Senate and House conferees on the two major condemnation bills, HB 94 (Suit) and SB 394 (Stolle), were unable to reach an agreement during the last hours of the Session. Both bills were left to die in conference. The major point of disagreement involved the language pertaining to local government condemnation powers. Redevelopment and housing authorities were singled

out as abusers of condemnation, despite the facts and despite the passage of HB 699 (Suit) that limits what constitutes a blighted area for the purposes of housing authorities law. The interested parties had agreed on the remaining issues and language for the other condemning entities. During intense negotiations late Friday, it became apparent that the House and Senate would be unable to agree on language for local governments. The House conferees were insisting on further restrictions on local government powers; the Senate conferees felt that the restrictions were too severe and would negatively affect the legitimate exercise of condemnation authority.

The Senate and House Courts of Justices committees may create a joint subcommittee to study the issue of eminent domain and recommend a solution for the 2007 session of the General Assembly. The Housing Study Commission is another potential venue. Therefore, even though there is no major rewriting of the laws of eminent domain this year, the issue remains very much alive.

In addition to HB 699, defining a blighted area for the purposes of housing authorities, the other major eminent domain bills that was enacted include:

- HB 132 (Cosgrove), which removes the option of the landowner to choose commissioners to hear an eminent domain case. Only jurors or the court shall be permitted to hear such matters. All of the jurors in an eminent domain proceeding are required to be freeholders in the jurisdiction of the land in question.
- HB 631 (Phillips), which requires that the parties in a condemnation proceeding attend a dispute resolution orientation session.
- HB 771 (Armstrong), which requires localities to hold a public hearing prior to adopting an ordinance or resolution initiating a condemnation.
- HB 1537 (Saxman), which provides that any sport shooting range which is condemned and which relocates to another site in the same locality shall not be subject to any noise control standard more stringent than that in effect at the previous location.

Firearms

HB 1577 (Cline) removes the current 5-year limit on concealed weapons permits, but retains fingerprinting of applicants. The bill also obligates the State Police to run a criminal background check on applicants. HB 1265 (Janis) amends the emergency laws to provide that a declaration of an emergency does not allow any governmental agency to limit a person’s rights regarding the ownership and carrying of weapons, except that in an emergency situation, a locality may prohibit bringing guns into an emergency shelter.

Legislation that would have required landowners to allow individuals to bring guns onto the parking lot of the landowner was killed in a Senate committee. Legislation that would have invalidated many county ordinances regarding the discharge of firearms was carried over. The bill would have required any shooting limits to be the same as hunting limits.

Dangerous dogs

In the wake of deaths and serious injuries caused by dogs, the General Assembly overhauled animal control regulations. HB 339 (Orrock) requires licensed veterinarians to forward vaccination information for dogs to the local treasurer. The treasurer will then bill the owners of unlicensed dogs for a pet license. The duration of a dog or cat license can be equal to and run concurrent with the effective period of the rabies vaccination.

HB 340 (Orrock), HB 1039 (Melvin) and SB 200 (Houck) expand the authority to petition a court to find a dog dangerous to any law-enforcement officer and make that petition mandatory. The legislation also requires that the State Veterinarian set up a Virginia Dangerous Dog Registry, and (i) expands the definition of "dangerous dogs” to include dogs that inflict injury to another cat or dog requiring the animal to be euthanized while also broadening safe harbor provisions; (ii) requires that a dog that has been found to be dangerous or vicious be spayed or neutered; and (iii) requires insurance be maintained for a dangerous dog and raises the policy limit requirement to $100,000. SB 200 originally sought to require criminal penalties for the owners by setting out a penalty scheme ranging from a Class 3 misdemeanor to a Class 5 felony for violations that result in serious injury or death.

Legislation failed that would have prohibited the use of gas chambers for animal euthanasia.

Internet postings

HB 563 (Nixon) removes the sunset provision prohibiting certain information from being posted on a circuit court clerk's website . The bill also requests the Supreme Court to develop methods and policies for the redaction of social security numbers from land records maintained in electronic form and made available via secure remote access and report its findings to the General Assembly prior to November 15, 2006.

Whistleblowers

HB 781 (Albo) requires localities that have a "fraud, waste, and abuse auditor appointed by the governing body" to also establish a fraud, waste and abuse hotline that employees and citizens may call. The auditor is to investigate complaints. No employee may be retaliated against for lodging a complaint that is a matter of public concern. The bill applies to all counties and cities, and to those towns with populations exceeding 10,000. In effect the bill requires some localities to have a whistleblower provision.

Retirement benefits

HB 37 (Tata) allows localities the option of extending Law Enforcement Officers Retirement System benefits to full time emergency medical services technicians. The extension is at the option of the locality. Benefits legislation that did not get through the legislature included bills to increase the health care insurance credit for teachers, to extend Line of Duty benefits retroactively to local public safety personnel, to require that all deputy sheriffs receive enhanced retirement benefits under the Law Enforcement Officers Retirement System and to increase the multiplier used to determine retirement benefits. Legislation to increase the retired teachers health insurance credit and to extend LEOS benefits to deputy sheriffs is likely to pass in the near future.

Population classifications

HB 1200 (Landes) replaces population brackets and other designations with the names of specific localities. The legislation was carried over to allow localities time to examine the bill to make sure that the listing of specific localities was indeed correct.

Elections administration

Legislation to require voter verified paper trails for ballots was defeated, as was legislation to conduct a pilot program on paper trail ballots. Also carried over was legislation that would have required localities to include employees of local registrars in local personnel systems.

Helpful procurement bills

Several bills that may prove to helpful to local procurement process were enacted, as shown below.

- HB 458 (Rust) will allow public entities to procure professional services, excluding contracts for architectural and engineering services, using contracts held by any public body in the

United States. This could result in a cost savings depending on whether the public entity holding the contract charges a service fee. Current authority allows for cooperative procurement for goods only.

- HB 1183 (Caputo) provides an exception to the competitive negotiation process for the procurement of professional services. If the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror. This proposal gives greater flexibility to public bodies and to offerors in the procurement of professional services.
- HB 1416 (Fralin) exempts design-build or construction management projects undertaken by any local governing body not expected to cost more than $1 million from approval of the Design-Build Review Board. As a result, such local governing bodies have authority to enter into contracts on a fixed price design-build basis or construction management basis.

Compromise adopted on military leave bill

HB 33 (Tata) requires that employees returning from military leave be paid for any portion of the federally mandated eight-hour post-return rest period that overlaps a scheduled workday. The original version of the bill would have required that the 15 days of paid leave for military duty currently guaranteed to state and local employees be calculated as fifteen full work shifts, regardless of length. This would have effectively tripled the number of paid hours of military leave guaranteed to firefighters and others working 24-hour shifts.

Natural resources

Water quality

The General Assembly adopted several water quality measures helpful to local governments, and put off for another year discussion of a long-term source of funds for water pollution clean-up.

Legislation that passed included SB 644 (Watkins), which gives local governments, particularly smaller localities, better access to the Water Quality Improvement Fund. The bill, an initiative of the Virginia Association of Municipal Wastewater Agencies and supported by VML, is designed to better align the Water Quality Improvement Act grants program with the 2005 Nutrient Trading Law and the State Water Control Board’s new regulations. The bill:

- Restores grant eligibility for new or expanding publicly owned treatment works that are not defined as significant dischargers, but are still subject to the SWCB’s new nutrient control requirements. Currently, only those plants that are defined as significant dischargers are eligible to receive grants from the Fund.
- Authorizes the Department of Environmental Quality to use the Fund for design and installation of nutrient removal technologies. Currently, grants to sewage treatment facilities are allocated for two uses, with the larger portion used for biological nutrient removal facilities and other appropriate nutrient removal technologies, and the smaller portion being used for only state-of-the-art facilities. The bill removes this state-of-the-art restriction on the smaller portion.

Related legislation, HB 1150 (Lingamfelter), requires the Secretary of Natural Resources to develop a clean-up plan for the Chesapeake Bay and Virginia’s impaired rivers and streams. The plan, due by Jan. 1, 2007, will include measurable objectives, a description of the strategies to meet the plan's objectives, time frames for accomplishing the objectives, and a plan for disbursing funds for point and nonpoint pollution projects. The plan also is to include an analysis of alternative funding mechanisms. HB 1457 (Ware) allows an aggrieved party (this could be an industry or a municipality) to conduct a “use attainability analysis” in order to demonstrate that attaining the designated use for an impaired water body is not feasible. The State Water Control Board will then determine if the development or implementation of the total maximum daily load should be delayed.

SB 626 (Quayle) was carried over to the 2007 session. The bill would establish a $1 per day lodging fee ($32 million annually), and send that money, plus $40 million annually in recordation tax revenues, to the Virginia Water Quality Improvement Fund. Also carried over were SB 413 (Hanger), legislation that proposes to transfer $100 million in recordation taxes annually to the WQIF, and HB 678 (Wardrup), which would raise $5 million annually for the WQIF by taxing newspapers, magazines, newsletters, or other publications at the rate of a penny on every publication.

Other bills that failed to advance included legislation that would have required localities under the jurisdiction of the Chesapeake Bay Preservation Act to use the U.S. Geological Survey's designation of water bodies with perennial flow; a bill that would have required every publicly owned sewage treatment facility serving a population of 55,000 or greater to meet its nutrient loading allocation for limiting its discharge of nitrogen and phosphorus by July 1, 2010.

Solid waste

HB 647 (Scott) and SB 57 (Reynolds) give local governments greater flexibility in meeting state recycling goals. These bills, which are identical, establish a new regime for credits that can be used in meeting solid waste recycling rates. Currently, a credit of one ton for each ton of recycling residue generated and deposited in a landfill, not to exceed one-fifth of the 25 percent requirement, is allowed in calculating the planning unit's recycling rate. This legislation does not change the credit for recycling residue but, in addition, extends a two-percentage point credit for source reduction programs, a ton-for-ton credit for solid waste material that is reused, and a ton-for-ton credit for any non-municipal solid waste material that is recycled. It also reduces the current requirement of a minimum 25 percent recycling rate for less densely populated communities or those with high unemployment rates. Finally, not meeting the mandated recycling rate cannot be the sole reason for denying the denial of a permit or permit amendment for a new sanitary landfill, incinerator, or waste-to-energy facility.

Another bill changes the formula for allocating litter control and recycling grants. HB 448 (Ware) increases the percentage of grants awarded to localities from the current 75 percent to 90 percent. The 20 percent of grants allocated to statewide and regional litter prevention recycling educational programs will be reduced to 5 percent, and will be awarded to localities and nonprofits for litter prevention and recycling. Up to 5 percent of the litter prevention and recycling grants will be allocated for administrative expenses.

Related legislation requires that the Director of the Department of Environmental Quality evaluate proposed solid waste management facilities or expansions for potential human health, environmental, transportation infrastructure, and transportation safety impacts and needs. HB 421 (Bulova) requires that the permit application include certification from the locality that the new or expanded facility is consistent with the regional solid waste management plan. Applications for permits-by-rule must include a certification by the locality that the facility is consistent with regional and local solid waste management plans. HB 554 (Saxman) requires the Department of Environmental Quality to develop policies to allow burning of vegetative waste at landfills that have stopped accepting waste, but have not been released from post closure care requirements.

Biosolids

The General Assembly passed legislation requiring a new sewage sludge fee. VML worked with the Virginia Farm Bureau, the Agribusiness Council, the Virginia Association of Municipal

Wastewater Agencies, the patron, and others to craft HB 1134 (Cline), which requires the Board of Health to establish an initial biosolids permit fee of $5,000. A fee of up to $1,000 will be charged for the reissuance, amendment or modification of a permit. Fees will go into the Health Department's Sludge Management Fund.

Several problematic biosolids bills died in committee, including HB 690 (Hogan), which would have prohibited sewage sludge from being stored at site where it is being land applied for more than three days prior to application; HB 688 (Abbitt), which would have prohibited the land application of sewage sludge beginning Jan. 1, 2007, unless the sewage sludge is applied in the same locality in which it is generated; and HJR 101 (Byron), requesting the Departments of Conservation and Recreation and Environmental Quality to study the impact of the land application of biosolids on water quality.

Water supply

Several years ago, the General Assembly required all local governments to develop water supply plans. This year, HB 552 (Saxman) clarifies that towns can enter into a regional water supply plan with an adjacent county. An agricultural industry initiative, HB 1185 (Landes) limits Department of Environmental Quality authority over water withdrawals for agriculture. The legislation attempts to give off-stream uses, such as farm ponds, additional consideration compared to in-stream uses.

Wetlands, erosion and sediment control, stormwater

The General Assembly acted favorably on amendments put forward by local governments to HB 1454 (Scott). The bill allows a firm that has created and operates an approved wetlands mitigation bank in multiple jurisdictions to annually file erosion and sediment control specifications for wetlands mitigation projects with the Virginia Soil and Water Conservation Board. The Board has 60 days to approve the specifications. If no action is taken within 60 days the specifications are deemed approved. Projects that are not covered by general specifications will have to comply with the local erosion and sediment control program. This bill will not become effective without a specific appropriation in the general appropriation act to support this activity.

HB 684 (Rust) provides definitions of terms in the Erosion and Sediment Control and Stormwater Management Acts that clarify what are acceptable flow rates from storm runoff at sites where land development projects are occurring.

Legislation that clarifies provisions of 2004's stormwater consolidation law, SB 274 (Whipple), requires Tidewater localities and those that are classified as an MS4 under the federal Clean Water Act to adopt a local stormwater management program. The locality is to adopt its stormwater program between 12 and 18 months after the effective date of the Virginia Soil and Water Conservation Board's regulation that establishes local program criteria and delegation procedures. Under current law these localities are to adopt a program by July 1, 2006. The bill also increases the maximum fine for violation of the provisions of the stormwater law from a civil penalty of $25,000 to $32,500.

The General Assembly carried over problematic legislation, SB 594 (Watkins), which would have prohibited localities from regulating the registration, packaging, labeling, sale, storage, distribution, use, or application of fertilizer, have offered changes they hope will address local concerns. Local governments remain concerned about the proposal, because they are responsible for stormwater management programs and must address fertilizer management.

Transportation

Towing regulations
SB 134 (O'Brien) and HB 1258 (Hugo) provide that local towing regulations can be no less restrictive than those imposed by the new Board for Towing and Recovery Operators. The measure also expands localities' ability to regulate "trespass tows" by ordinance and provides that, in the event a vehicle is towed from one locality to be stored in another, the ordinances of the locality from which the vehicle was towed shall apply.

Mopeds
HB 366 (Carrico) will allow localities to adopt ordinances regulating noise from mopeds and motorized scooters and skateboards.

Concession agreements under PPTA
SB 666 (Saslaw) defines the terms "concession" and "concession payments" within existing PPTA legislation and designates that concession payments received as result of PPTA proposals and projects be deposited in the Transportation Trust Fund (TTF). A new account is established in the TTF specifically for the deposit and accounting of concession payments and the Commonwealth Transportation Board will be responsible for allocation of these funds.

The bill also clarifies that title and indirect ownership of the property conveyed by a public entity to a private entity as part of a concession is retained by the public entity with full ownership conveyed back at the completion of the concession period.

Construction by local employees
SB 196 (Williams) provides that the Commonwealth Transportation Board may enter into written agreements with localities for the building and maintenance of any of the roads in any system of state highways by local employees provided that: (i) the locality has obtained a cost estimate for the work of not less than $300,000 nor more than $650,000 and (ii) the locality has issued an invitation for bid and has received fewer than two bids from private entities to build or maintain such roads.

User fees
SB 720 (Wagner) allows any locality to establish highway user fees for highways that are not part of any system of state highways when such highway's capacity is expanded by construction or reconstruction. Further, the Commonwealth Transportation Board is given the authority to enter into agreements with localities, authorities, and transportation districts to establish highway user fees for such system of state highways or portion thereof that the localities, authorities, and transportation districts maintain.

Revenue-sharing
SB 721 (Saslaw) expands the present revenue-sharing fund program for counties to include cities and towns as well. The annual match limit is raised to $1 million per locality, and the total limit on state funds is raised to $50 million. Up to half of local contributions may take the form of proffers.

Reimbursement for junk car removal
HB 948 (Morgan) clarifies that localities are eligible for a $50 reimbursement from the Commissioner of the Department of Motor Vehicles for the removal of inoperable abandoned motor vehicles left on property, either public or private.

Photo-red amendment failed
HB 181 (McEachin) would have allowed any locality to use photo-red monitoring to reduce the number of accidents caused by drivers disregarding red-lights.

Human Development

Community Services Boards
HB 774 (Nixon) allows for community services boards (CSBs) and behavioral health authorities (BHAs) to enter into joint agreements with two or more CSBs or BHAs for the purpose of 1) providing treatment, habilitation, or support services for consumers with specialized and complex service needs and associated managerial, operational, and administrative services and support, and 2) promoting clinical, programmatic, or administrative effectiveness. The bill also allows for an administrator or management body to coordinate the activities of the joint agreement, and gives this administrator or body various powers and duties, including accepting funds from various public and private sources, hiring staff, and entering into service contracts on behalf of the CSBs and BHAs subject to the agreement. The bill was amended at VML and VACo's recommendation to state that CSBs/BHAs will give local governments 30 days to review and comment on proposed agreements before they are executed.

Comprehensive Services Act/group homes for children
Two major pieces of legislation were enacted that deal with the licensure of group homes and residential facilities servicing children. Both stemmed from the work of a legislative study committee on private youth and single-family group homes.

HB 577 (Nixon) adds new requirements for the initial licensure and renewal of licenses for group homes/residential facilities serving children and reiterates the goals of the Comprehensive Services Act in serving children in the community. Regulations will be promulgated to require, as a condition of initial licensure of or license renewal, that a group home applicant: (i) be personally to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

Appropriate state agencies must notify relevant local governments and placing and funding agencies of multiple health and safety or human rights violations in children's residential facilities when such violations result in the lowering of the licensure status of the facility to provisional; post on the department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children; require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents; require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan; and modify the term of the license based on a change in compliance. The Department of Social Services will be given the additional responsibility for disseminating or posting an accurate list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency.

In the event a group home or residential facility has its licensure status lowered to provisional as a result of multiple health and safety or human rights violations, each child placed in the facility as a part of the Comprehensive Services Act must be assessed to determine whether it is in the best interests of that child to remain in that facility or be moved to a fully licensed facility. New placements are prohibited until full licensure status has been restored. Prior to placing a child across jurisdictional lines, a local family assessment and planning team must explore all appropriate community services for the child; document that no appropriate placement is available in the locality; and report the rationale for placement to the community policy and management team (CPMT). CPMTs are required to report annually to the office of Comprehensive Services on the gaps in services needed to keep children in their community and any barriers to the development of the services. CPMTS also are required to notify receiving school divisions of placements across jurisdictional lines and to identify children with disabilities and foster care children to expedite enrollment and special education.

SB 190 (Martin) authorizes the Superintendent of Public Instruction, the Director of the Department of Juvenile Justice, and the Commissioner of Social Services **to issue orders of summary suspension of a license to operate a group home or other residential facility for children**, in cases of immediate and substantial threat to the health, safety, and welfare of residents. The bill also authorizes the state mental health commissioner to issue orders of summary suspension of a license to operate a group home or other residential facility for adults, in cases of immediate and substantial threat to the health, safety, and welfare of residents. This bill allows for consistent application of this authority for the interdepartmental licensure program for children's residential facilities by giving all four departments the authority to address egregious circumstances while ensuring due process for the licensees or certificate holders.

CSA legislation that failed during the session would have provided that only legal guardians related to a child were responsible for contributing to the cost of services provided under CSA, and would have increased the mandated population served under CSA.

Day Care

SB 257 (Wagner) exempts from state day care licensure requirements any recreational programs for school-age children that are offered by local governments and staffed by local government employees. Local governments running such programs will be responsible for developing and enforcing safety and supervisory standards.

Health

SB 252 (Puller) and HB 714 (McQuigg) repeals the sunset clause allowing for local health partnership authorities set to expire this year, thereby establishing the law indefinitely. This authorizes local government and private entities to work together to address health care needs of an area and coordinate service provision so as to eliminate duplication and inefficiency.

VML and VACo will be working during the interim on issues raised in HB 129 (Cosgrove), which would authorize the Virginia Department of Health to declare an area a public health hazard and require that sewer services be offered if existing sewer service is within one-half mile of the affected area and if sufficient capacity exists. The bill was carried over, with the patron requesting that a letter be sent to VDH, directing it to work with VML and VACo to come up with a solution to this issue.

Medicaid
HB 758 (Hamilton) requires the Department of Medical Assistance Services (DMAS) to convene a Medicaid Revitalization Committee to prepare recommendations for a State Plan amendment or an application for a waiver to reform and revitalize Virginia's Medicaid program. The recommendations shall include fundamental elements to move toward greater emphasis on the state's role in purchasing healthcare services, leveraging the forces of the marketplace to customize services to meet the needs of Virginia's various Medicaid populations, promoting personal responsibility and allowing individuals to manage their healthcare, bridging public and private coverage, and containing the growth of Medicaid expenditures. Requires DMAS to prepare, submit, and seek approval of any required State Plan amendments or waiver authority by May 15, 2007. The provisions of the bill are subject to an appropriation of funds in the General Appropriation Act.

HB 759 (Hamilton) requires the Board of Medical Assistance Services to include, in the state plan for medical assistance services, a provision to establish a public-private long-term care partnership program between the state and private insurance companies that must be designed to reduce Medicaid costs for long-term care through encouraging the purchase of private long-term care insurance policies. The components of the program, including the treatment of assets for Medicaid eligibility and estate recovery, must be structured in accordance with federal law and applicable federal guidelines.

Social Services
HB 73 (Orrock) and SB 25 (Houck) authorize a city council to appoint one or its members to the local social services board. If that council member ceases to be a member of the city council, then the position on the social services board must also be vacated by that individual, and the city council may appoint another individual to fill the vacancy. Counties currently have this authority.

HB 1146 (Orrock) increases the membership of the State Board of Social Work from seven to nine non-legislative citizen members appointed by the Governor. It also increases from five to seven the number of members who must be licensed social workers. As introduced, the bill would have required any individual, including local government employees, using the title "social worker" or designated as a social worker, to hold a license issued by the Board of Social Work. The requirements would have become effective July 1, 2009. It is likely that the issue of licensure will be examined in the coming year, with the possibility of additional legislation coming forward in 2007.

Legislation was killed that would have required all operators of assisted living facilities, adult day care centers, and child welfare agencies to complete a training program on emergency preparedness as a condition of licensure.

Study resolutions point to 2007 issues
It seems that the leadership of the General Assembly tried to hold down the creation of study committees; at least it seems that fewer major studies affecting local governments made it through the legislative process. Here's an overview of issues to be studied in the upcoming year.

Administration of the Comprehensive Services Act. HJR 60 (Nixon) calls for a JLARC evaluation of the administration, regulation, accountability and cost of services under the CSA, including services for children placed across jurisdictional lines. The report is due in 2008 to JLARC and to the committee created under SJR 96 (Hanger). The two-year legislative committee will review the JLARC report. The primary responsibility of the committee created by SJR 96 is to review the JLARC report.

Animal control. HJR 116 (Kilgore) establishes a Crime Commission study of the need for regulation, training, and funding of animal control officers, including an examination of the duties, responsibilities, and budgets of animal control officers.

Underground transmission lines. HJR 100 (May) calls for a two-year JLARC study of the criteria used by the State Corporation Commission in evaluating the feasibility of placing transmission lines underground. The study is contingent on funding being included in the Appropriations Act.

Manufacturing Development Commission. HB 1233 (Purkey) and SB 261 (Wagner) create the commission to, among other issues, consider the effect of local and state tax policies, evaluate the effectiveness of state and local economic development programs and develop a comprehensive energy plan for the state.

Preservation of open space land. HJR 133 (Lewis) and SJR 94 (Hanger) create a legislative subcommittee study of the needs for open-space land, the cost and potential long-term funding sources for open space. The study will include a review of strategies to preserve farmlands such as technical and financial assistance for the promotion of purchase of development rights programs.

Juvenile justice system. HJR 136 (Moran) creates a two-year Crime Commission study of the juvenile justice system, with a focus on recidivism, disproportionate minority contact with the justice system, improving the quality of and access to legal counsel, accountability in the courts, diversion, and the statutes relating to juvenile delinquency.

Devolution of unified state road system. SJR 60 (Williams) creates a legislative committee to look at the redefinition of the role of the state, local and regional governments in transportation. The two-year study also would look at the restructuring of state agencies to focus on planning and contract management instead of direct construction, operation and service delivery.